

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JASON LEE DEKUBBER,

Petitioner,

v.

Case No. 2:09-cv-164
HON. R. ALLAN EDGAR

JEFFERY WOODS,

Respondent.

MEMORANDUM AND ORDER

Michigan state prisoner Jason Lee DeKubber filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. Respondent Woods moves to dismiss the habeas petition on the ground that petitioner DeKubber has failed to exhaust his remedies in the Michigan state courts. [Doc. No. 8]. Petitioner DeKubber has not timely filed a response to the motion to dismiss and the Court deems him to have waived opposition to the motion.

The habeas petition was referred to Magistrate Judge Timothy P. Greeley for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and W.D. Mich. LCivR 72.1(d). On June 30, 2010, Magistrate Judge Greeley submitted his report and recommendation. [Doc. No. 20]. The Magistrate Judge recommends that the habeas petition be dismissed without prejudice on the ground that petitioner DeKubber has not exhausted remedies in the Michigan state courts as required by 28 U.S.C. § 2254(b)(1). It is further recommended that any application for a certificate of appealability be denied pursuant to 28 U.S.C. § 2253(c)(2).

Petitioner DeKubber has not timely filed an objection to the report and recommendation. After reviewing the record, the Court **ACCEPTS and ADOPTS** the report and recommendation pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. LCivR 72.3(b). The Court concludes that the 28 U.S.C. § 2254 petition for writ of habeas corpus shall be **DISMISSED WITHOUT PREJUDICE**. The respondent's motion to dismiss the habeas petition [Doc. No. 8] is **GRANTED** for the reasons expressed in the report and recommendation.

Any application by petitioner DeKubber for a certificate of appealability shall be **DENIED** pursuant to 28 U.S.C. § 2253(c)(2) and Fed. R. App. P. 22(b)(1). For the reasons expressed in the report and recommendation, reasonable jurists could not find that this decision to dismiss the habeas petition is debatable or erroneous. *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2009); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Webb v. Mitchell*, 586 F.3d 383, 401 (6th Cir. 2009).

A separate judgment will be entered.

SO ORDERED.

Dated: July 21, 2010.

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE